

February 14, 2012

Via PDF

Susan Piper
Special Assistant to the Mayor
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612

Re: Bay Citizen Public Records Request

Dear Ms. Piper:

This law firm represents The Bay Citizen. Last week the City of Oakland (“Oakland”) declined to provide certain records responsive to a public records request made by Shoshana Walter of The Bay Citizen on January 26, 2012 (“Request”) and designated by Oakland’s online system as Request No. 8266. Oakland’s denial of the Request is not supported by applicable law or facts, and The Bay Citizen formally requests that Oakland reconsider its denial.

The Bay Citizen’s request sought a “map and list of boundary lines/streets” in Oakland Mayor Jean Quan’s “100-block plan” for reducing violence. In your email dated February 9, 2012, you stated that Oakland based its decision not to produce the requested information on the ground that the requested information constituted “law enforcement intelligence” protected from disclosure by California Government Code § 6254(f).

However, the California Supreme Court has held that § 6254(f)’s “intelligence information” exemption is to be narrowly construed:

We therefore reject defendants’ contention that the ‘intelligence information’ exemption of section 6254, subdivision (f), exempts all information which is ‘reasonably related to criminal activity.’ Such a broad exemption would . . . undercut the California decisions which in some cases limit the exemption of subdivision (f) to cases involving concrete and definite enforcement prospects. And most important, it would effectively exclude the law enforcement function of state and local governments from public scrutiny under the California [Public Records] Act.

ACLU v. Deukmejian, 32 Cal. 3d 440, 449 (1982). Indeed, the Deukmejian Court found that the “intelligence information” exemption applied only to (1) “personal identifiers,” i.e., “information that might lead the knowledgeable or inquisitive to infer the identity” of individuals named in

law enforcement intelligence files; (2) information that “might identify confidential sources”; and (3) information “that was supplied in confidence by its original source,” i.e., information that a “law enforcement agency obtained . . . in confidence originally.” *Id.* at 449-50, n. 11.

The map and list of boundary lines/streets sought by the Request do not fit within any of these three categories. Rather, the requested information concerning the “100-blocks” plan was compiled by Oakland Police and the Mayor’s staff using *publicly* available statistical data on shootings and homicides.

Further, even if the intelligence information exemption were generally applicable to the requested types of records (which it is not), the exemption would not apply here because it has been waived. The intelligence information exemption applies only to the records of certain law enforcement agencies and is waived if the purportedly protected information is shared with non-law enforcement parties. See Cal. Gov. Code § 6254(f); see also 79 Ops. Cal. Atty. Gen. 206, at 1 n.4 (1996) (“When an agency exercises its permissive disclosure authority, public inspection thereafter may not be denied.”). As Mayor Quan’s Executive Summary of the 100-block plan makes clear, the information sought by the Request has already been shared with non-law enforcement government agencies and other businesses and residents in the community. See Executive Summary (attached) at 3-4 (stating that “all City departments” have been asked “to do their share to improve the quality of life in these 100 Blocks” and specifically identifying projects that the Public Works Agency and Oakland Parks & Recreation will undertake within those blocks). Accordingly, Oakland’s reliance on this exemption is meritless.

In light of the foregoing, The Bay Citizen requests that Oakland reconsider its denial of The Bay Citizen’s Request and that it produce responsive records in a timely fashion. Please do not hesitate to contact me if you wish to further discuss this matter.

Sincerely,



Michael D. Rothberg

Encl.

cc: Shoshana Walter
Barbara Parker, Esq.
Arlette Flores-Medina